IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

PETITION NO.79 OF 2005.

Re:- Shivkumar D. Iyer
S/o. P. Dandapani

... Debtor.

Ex-Parte :-
M/s. Manipal Finance Corporation Ltd.

...Petitioning Creditors

Mr. Kishor Jain i/by Mr. Tushar Gordia for the petitioning Creditors.

CORAM : ANOOP V. MOHTA,J.

DATED : 21st, April, 2007

P.C.

Admittedly present Insolvency proceeding has been initiated based on the arbitral award.

2. In **Paramjeet Singh Patheja V. I.C. D. S. Limited, Judgment Today 2006(10) S.C. 41** the Supreme Court has held thus:-

> "i) that no insolvency notice can be issued under Section 9(2) of the Presidency Towns Insolvency Act, 1909 on the basis of an Arbitration Award;
>
> ii) that execution proceedings in respect of the award cannot be proceeded with

in view of the statutory stay under Section 22 of the SICA Act. As such, no insolvency notice is liable to be issued against the appellant.

iii) Insolvency Notice cannot be issued on an Arbitration Award.

iv) An arbitration award is neither a decree nor an order for payment within the meaning of Section 9(2). The expression "decree" in the Court Fees Act, 1870 is liable to be construed with reference to its definition in the CPC and held that there are essential conditions for a "decree".

(a) that the adjudication must be given in a suit.

(b) That the suit must start with a plaint and culminate in a decree, and

(c) That the adjudication must be formal and final and must be given by a civil or revenue court. An award does not satisfy any of the requirements of a decree. It is not rendered in a suit nor is an arbitral proceeding commenced by the institution of a plaint.

v) A legal fiction ought not to be extended beyond its legitimate field. As such, an award rendered under the provisions of the Arbitration Act, 1996 cannot be construed to be a "decree" for the purpose of section 9(2) of the Insolvency Act.

vi) An insolvency notice should be in strict compliance with the requirements in Section 9(3) and the Rules made thereunder.

vii) It is a well established rule that a

provision must be construed in a manner which would give effect to its purpose and to cure the mischief in the light of which it was enacted. The object of Section 22, in protecting guarantors from legal proceedings pending a reference to BIFR of the principal debtor, is to ensure that a scheme for rehabilitation would not be defeated by isolated proceedings adopted against the guarantors of a sick company. To achieve that purpose, it is imperative that the expression "suit" in Section 22 be given its plain meaning, namely any proceedings adopted for realization of a right vested in a party by law. This would clearly include arbitration proceedings.

viii) In any event, award which is incapable of execution and cannot form the basis of an insolvency notice."

3. The judgment of the Supreme Court holds that an insolvency notice issued under Section 9(2) of the Presidency Town Insolvency Act, 1909 cannot be sustained on the basis of an arbitral award which has been passed under the Arbitration and Conciliation Act, 1996. In view of the judgment of the Supreme Court, it has now been settled that insolvency proceedings cannot be founded on an arbitral award. None appears before the Court to inform the Court as to whether the arbitral proceedings have been concluded. in any event having regard to the judgment of the Supreme Court, the Insolvency Petition would

not be maintainable.

4. The submission that there is no challenge to this notice on this ground based on **AIR 1970 Supreme Court 1475 in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Ors.** has no force. It is rejected as we are concerned with the Insolvency proceedings and not an execution of a Civil decree; as held by the Apex Court that Insolvency proceedings itself cannot be founded on an arbitral award, the insolvency proceedings and order passed thereon itself are nullity.

5. The petition is, therefore, dismissed.

[ANOOP V. MOHTA, J.]